



**SECURITIES AND EXCHANGE COMMISSION**  
**DIVISION OF ENFORCEMENT**  
100 F Street, N.E.  
WASHINGTON, DC 20549

The SEC's motion (ECF No. 83) to accept filing of videos of statements, where the transcripts of the statements are already filed, is denied. The parties agree that the transcripts accurately report that which was said.

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/s/ Alvin K. Hellerstein  
5/22/2020

May 20, 2020

**VIA ECF**

Honorable Alvin K. Hellerstein  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Re: SEC v. Kik Interactive Inc., Case No. 1:19-cv-5244 (AKH) (S.D.N.Y.)**

Dear Judge Hellerstein:

We write in response to the Court's Order dated May 19, 2020 (ECF No. 84), which instructed the SEC to explain why it now seeks to provide Chambers with the electronic video files described in its May 11, 2020 letter motion (ECF No. 83). For the reasons set forth below, specifically Kik's recent admission regarding the accuracy of the transcripts of the video files that are already in the record, the SEC will defer to the Court regarding the necessity of filing the relevant video recordings.

By way of background, the videos at issue record a total of eight different events from Kik's public marketing of Kin in 2017, including a promotional video, a cable TV interview, a video podcast, and appearances by Kik at five conferences or "meet-ups" in various cities. The SEC obtained these video recordings from the Internet during the investigation of this matter, and we subsequently prepared certified transcripts of the contents of these videos. After filing the Complaint in this case, the SEC provided the video recordings and transcripts to Kik.

During discovery, the SEC asked Kik to admit that both the video recordings and the corresponding transcripts were accurate. In response, Kik conceded the accuracy of the underlying video recordings but appeared to deny the accuracy of the transcripts. *See* SEC35 (ECF No. 60-35) at ¶¶ 15, 18, 21, 24, 28, 32, 35, 39 (stipulating to the accuracy of the videos); Kik's Responses to the SEC's First Set of Requests for Admissions (ECF No. 45-7) at Nos. 4, 8, 11, 15, 19, and 23 (stating, in response to each request to admit the accuracy of a particular transcript, that Kik "lack[ed] sufficient personal knowledge to either admit or deny this Request, and on that basis, among others, denies the Request").

Because of Kik's position, on March 20, 2020, when filing its Local Rule 56.1 Statement in support of its motion for summary judgment, the SEC cited *both* the video recordings and the

transcripts as support for a number of its factual statements regarding Kik's offer and sale of Kin. *See, e.g.*, SEC's 56.1 Statement (ECF No. 59) at ¶¶ 66-70. However, due to the difficulties associated with manually filing with the Clerk of Court the electronic video files during the coronavirus pandemic, the SEC filed on ECF placeholder exhibits for the videos. At the time of the SEC's March 20, 2020 filing, we understood the Court to have ordered the SEC to provide the actual video recordings to the Court, "as practical," after completion of briefing of summary judgment motions. *See* Order, ECF No. 56.

During the briefing that followed the SEC's March 20 motion for summary judgment, and despite its earlier denials during discovery, Kik abandoned its objections to the accuracy of the transcripts filed by the SEC. Kik admitted that Kik and its agents in fact said exactly what was contained in the various transcripts, which were quoted verbatim in the SEC's Local Rule 56.1 Statement. *See, e.g.*, Kik's Opposition 56.1 Statement (ECF No. 78) at ¶¶ 74, 75, 97, 103, 104, etc. Given Kik's prior, repeated objections during discovery, Kik's wholesale concession in this regard was unexpected. And, in light of Kik's admission regarding the accuracy of the SEC's quotation of its numerous statements made while marketing the Kin offering, the SEC agrees that the *content* of the video recordings is duplicative of the *content* of the transcripts that are already on file in support of the SEC's motion for summary judgment.<sup>1</sup>

Against this backdrop, the SEC simply filed its instant motion in an effort to comply with the Court's March 13, 2020 Order to provide Chambers with the video recordings that were cited in its Local Rule 56.1 Statement. Given that Kik now agrees that the transcripts of those recordings are accurate, the SEC will entirely defer to the Court regarding the necessity of filing the relevant video recordings.

Very truly yours,

/s/ *Stephan J. Schlegelmilch*

Stephan J. Schlegelmilch

cc: All counsel of record (via ECF)

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<sup>1</sup> That said, the video files do provide a visual and audio context for certain of Kik's statements about Kin – *e.g.*, many of the videos show Kik's CEO on stage and enthusiastically discussing the Kin offering in front of large audiences.